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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re BRANDON R., a Person Coming  
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

BRENDA R.,

Defendant and Appellant.

D053039

(Super. Ct. No. NJ13866)

APPEAL from a judgment of the Superior Court of San Diego County, Harry M. Elias, Judge. Affirmed.

Brenda R. appeals a judgment declaring her son, Brandon R., a dependent child of the juvenile court and removing him from her custody. She contends substantial evidence did not support the removal order or the court's finding there were no reasonable alternatives to removal. We affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

On January 28, 2008, authorities received a telephone call regarding a family disturbance and went to the home of Brenda and her husband, R.R. R.R. said that he and Brenda had an argument — he said she threatened to kill herself, then retrieved a handgun from her car and said the first bullet was for him. Brenda said she and R.R. had been having marital problems, and that she was depressed and thought he was having an affair. The deputy sheriff seized the gun; because Brenda was so distraught, she was placed on a mental health hold.

On January 29 Brenda filed for a temporary restraining order, alleging R.R. threatened to take Brandon away so she would never see him again. Brenda asserted that R.R. choked her and threw her on the bed, and that he had engaged in similar conduct on one other occasion. On February 1 the court dismissed the restraining order at Brenda's request.

Brandon was detained. The San Diego County Health and Human Services Agency (the Agency) petitioned on his behalf under Welfare and Institutions Code<sup>1</sup> section 300, subdivision (b), alleging that (a) Brandon's parents exposed him to domestic violence; and (b) Brenda had a mental illness, based on her reporting she was very depressed, admitted having suicidal thoughts and had threatened to shoot herself.

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code unless otherwise specified.

Brenda and R.R. began counseling, domestic violence treatment and parenting classes.

On March 1 Brenda, R.R. and their friend, C.S., (whom they consider their adopted mom) went to a bar. They left the bar with another man. R.R. became angry because C.S. and the man were in the back seat of the car, kissing and touching each other. He beat the man, took his wallet and threatened him with a replica handgun. C.S. and Brenda attempted to hide the weapon from police. R.R. was arrested and pleaded guilty to assault with a deadly weapon.

At a supervised visit on March 13, Brandon cried inconsolably and Brenda was unable to comfort him. Future visits were more successful and Brandon appeared content.

The court found that the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) applied because R.R. is a member of the Leech Lake Band of the Ojibwa Tribe (the Band). The Band stated it would intervene. On March 25 the court found the allegations of the petition to be true. The Agency requested an evaluation through the Interstate Compact for the Placement of Children for placement of Brandon in the maternal grandmother's home in Texas.

Brenda was attending parenting classes, a domestic violence program and therapy. Her therapist opined Brenda has major issues with depression, emotional dependency, mood instability and anger control. The therapist said Brenda also has unresolved anger and sadness because of R.R.'s infidelity, but that the couple intended to reunite when R.R. was released from jail. The therapist believed Brandon would be at high risk were he

returned to his parents. She said Brenda did not take direct responsibility for exposing Brandon to domestic violence but rather blamed others, and she minimized her contributions to her relationship problems. Brenda's domestic violence treatment provider said that Brenda initially was defensive and in denial that her actions had led to Brandon's removal, but that Brenda had begun to make progress and was taking responsibility for her actions. In an affidavit dated March 25, a representative from the Band, who declared she was authorized to speak for the Band in child custody matters, recommended removing Brandon from parental care. At a hearing on April 15, the Band's representative supported increased visitation and reunification.

At the disposition hearing on April 30, the social worker testified that Brenda's therapist reported Brenda continued to deny responsibility for Brandon's removal and had not yet addressed her depression. The social worker recommended Brandon not be placed in Brenda's care because at a supervised visit she noticed that Brandon was very upset but Brenda was unable to console him; however, the child appeared to be fine after he was returned to his caregiver's home. She recommended Brenda have a psychological or medical evaluation and participate in more parenting classes. The social worker testified that Brenda's domestic violence facilitator reported that although initially Brenda was very guarded and unwilling to participate, since that time she had made a complete turnaround and had begun interacting and accepting responsibility. The social worker believed that because Brenda had family support in Texas, Brenda intended to move there with R.R. after she was discharged from the military and he was released from prison.

An Agency expert in Indian affairs opined that returning Brandon to either parent would present substantial risk of harm to the minor due to (a) the serious domestic violence incident that potentially involved a weapon, (b) Brenda's mental health, and (c) R.R.'s violent criminal conduct and lack of participation in services due to his incarceration. He opined that Brenda needed more time in treatment. The Band supported reunification.

The court removed custody from the parents under section 361, subdivision (c)(1) and 25 United States Code section 1912(e). It found there had been active efforts to prevent the need for removal. It ordered Brandon placed in foster care and the parents to participate in reunification services.

## DISCUSSION

Brenda contends substantial evidence does not support the removal order or the court's finding there were no other reasonable alternatives to Brandon's removal. She argues that after Brandon was removed she immediately started services, and that by the time of the dispositional hearing she (a) had been participating in those services for nearly three months, (b) had completed two parenting programs and (c) was consistently visiting her son. She also argues the Band's expert supported returning Brandon to her.

A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) "The rule is clear that the power of the appellate courts begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact." (*In re*

*Tanis H.* (1997) 59 Cal.App.4th 1218, 1227.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also . . . 'view the record in the light most favorable to the orders of the juvenile court.'" (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Section 361, subdivision (c)(1) provides that a child may not be taken from the custody of his or her parents unless the juvenile court finds by clear and convincing evidence:

"There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody."

In addition, a court may not remove an Indian child from parental custody unless continued custody by the parent is "likely to result in serious emotional or physical damage to the child and that finding is supported by testimony of a 'qualified expert witness.'" (§ 361, subd. (c)(6); 25 U.S.C. § 1912(e).)

The focus of the removal statute is to avert harm to the child. (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.) At disposition the juvenile court considers all relevant evidence that refers to the allegations of the petition, and it considers the conditions as they existed at the time of the hearing. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.)

Substantial evidence supports the court's order removing Brandon from parental custody. Brenda engaged in domestic violence with R.R. Brenda said that in addition to

the incident leading to Brandon's removal, there had been another past domestic violence incident with R.R. Brenda applied for a restraining order, but within three days she requested that it be dismissed. After Brandon's removal and after Brenda and R.R. had begun attending services, R.R. assaulted a man they had met at a bar, and Brenda attempted to protect R.R. by concealing the replica gun used in the incident. The domestic violence facilitator reported that although Brenda initially had denied and minimized her role in the domestic violence, she had begun to take responsibility. However, she remained protective of R.R., and the social worker believed she planned to move away from California to join R.R. after she was discharged from the military and he was released from custody.

Also, Brenda had mental health issues not yet addressed in therapy. She had been depressed and had expressed ideas of suicide. She was beginning to engage in therapy and to participate in domestic violence treatment, but her therapist opined she needed to deal with these issues before Brandon could be returned safely to Brenda's custody. The social worker also was of the opinion that Brandon's safety depended on Brenda resolving her mental health issues so that she could provide a protective environment.

The Band's expert initially supported removing Brandon from Brenda's custody, but at the hearing the attorney for the Band instead argued for increasing visitation and for reunification. However, the Agency's Indian expert testified Brandon's protection required removal from Brenda's custody.

As to Brenda's argument that the court erred by finding there were no reasonable means to protect Brandon without removing him, the evidence showed that Brenda

needed to more fully treat her mental health and domestic violence issues before she could provide a safe home for Brandon. Her therapist opined her mental health posed a significant risk to Brandon's safe return, and although R.R. was incarcerated, Brenda remained protective of him and was only beginning to make significant progress in domestic violence treatment. Substantial evidence supports the court's finding.

#### DISPOSITION

The judgment is affirmed.

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IRION, J.

WE CONCUR:

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McDONALD, Acting P. J.

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O'ROURKE, J.